

1 GREENBERG TRAUIG, LLP
 2 SCOTT D. BERTZYK (SBN 116449)
 3 DENISE M. MAYO (SBN 275561)
 1840 Century Park East, Suite 1900
 Los Angeles, California 90067
 Telephone: (310) 586-7700
 Facsimile: (310) 586-7800
 Email: *Bertzys@gtlaw.com*

5 GREENBERG TRAUIG, P.A.
 6 GERARDO RODRIGUEZ-ALBIZU (Admitted *Pro Hac Vice*)
 777 South Flagler Drive, Suite 300 East
 West Palm Beach, Florida 33401
 Telephone: (561) 650-7900
 Facsimile: (561) 655-6222

9 Attorneys for Plaintiff
 AREAS USA SJC, LLC

11
 12 **UNITED STATES DISTRICT COURT**
 13 **NORTHERN DISTRICT OF CALIFORNIA**

14 AREAS USA SJC, LLC, a California
 15 limited liability company,

16 Plaintiff,

17 vs.

18 MISSION SAN JOSE AIRPORT, LLC, a
 19 Colorado limited liability corporation; and
 20 MISSION YOGURT, INC., a Colorado
 corporation,

21 Defendants.

22
 23
 24 and related Counterclaim.

CASE NO. C11-04487 HRL

**PLAINTIFF AREAS USA SJC, LLC'S
 OBJECTIONS TO DEFENDANTS
 MISSION SAN JOSE AIRPORT AND
 MISSION YOGURT, INC.'S TRIAL
 EXHIBIT LIST**

Date: December 18, 2012
 Time: 1:30 p.m.
 Courtroom: 2
 Judge: Hon. Howard R. Lloyd

Complaint filed: September 9, 2011
 Trial date: January 7, 2013

INTRODUCTION

In accordance with the Court's Standing Order Re: Pretrial Preparation ("Standing Order"), Plaintiff Areas USA SJC, LLC ("Areas") hereby submits its Objections to Defendants Mission San Jose Airport, LLC and Mission Yogurt, Inc.'s ("Mission") Trial Exhibit List. Most of Mission's pretrial filings do not comply with the Court's Standing Order, and Mission's exhibit list is no exception.¹ Mission's exhibit list suffers from all of the following infirmities, and more:

Up front, Mission refuses to identify those deposition exhibits Areas identified on its exhibit list that Mission might want to introduce — simply reserving the right to try to introduce some unspecified exhibits — and fails to provide the other information required by the Court's Standing Order, such as purpose for which the exhibit is offered, and identity of the witness or witnesses through whom the exhibit would be introduced. This is important, because, as Areas' exhibit list expressly states, Areas may not actually seek to introduce all the exhibits listed, and most assuredly will pare down its list after motions *in limine* have been ruled upon. Without such information from Mission, Areas cannot possibly evaluate even what exhibits Mission would intend to offer that it has not specifically listed, much less whether it is possible to stipulate to admission for a limited purpose.

With the exception of documents produced by Fentress Architects (as to which some poor paralegal seems to have been given the task of identifying almost everything they produced), almost all Mission's remaining exhibits are exhibits Mission selectively produced just days before the pretrial submissions or, incredibly, that Mission did not produce until December 10. Such belated and selective productions and withholdings are the subject of a pending Areas' Motion *in Limine* (No. 1). Mission's description of the "purpose" for which documents will be offered is so conclusory as to be meaningless, and wholly insufficient to enable Areas to determine whether admission of a hearsay document would be appropriate for a limited purpose. Areas objects to having to do Mission's trial work by guessing at and stating possible limited purposes as to which admission might be proper.

¹ Nor did Mission comply with other aspects of the Standing Order, such as the Court's requirement that the meet and confer be conducted by lead trial counsel. The Court need only look at the Joint Statement submitted by the parties on December 4 to see that Mission's alleged lead trial counsel (Meryl Macklin) did not attend, and sent attorney Daniel Rockey in her stead.

1 In still other instances, Mission does not even try to identify a witness through whom its
2 documents would be admitted. In the case of Fentress, Mission simply identifies “Custodian”; but there
3 is no Fentress custodian on Mission’s witness list.

4 In short, Mission’s exhibit list is a mess, and over the weekend, Mission decided to make it
5 worse by indicating that it had omitted exhibits it now wishes to add. As a courtesy, Areas has
6 stipulated that, if the Court is so willing (and Areas can have additional time to review and tender
7 appropriate objections Mission’s supplemental designations), Mission may supplement its exhibit list.
8 Objections to newly added exhibits must, of necessity, be added after Mission makes that supplemental
9 filing.

10 Most of Mission’s exhibits are objectionable for reasons noted in Areas’ December 4, 2012,
11 Motions *in Limine*. Motion *in Limine* No. 1 raises the issue of withholding of documents by Mission
12 and its representatives, and the exclusionary consequences of such withholding. Motion *in Limine* No. 2
13 raises the issue of whether Mission should be allowed to introduce evidence or argument concerning the
14 availability of insurance on the sublet premises. Motion *in Limine* No. 3 raises the issue of the extent to
15 which pre-space swap communications regarding prior TA-21 space may be used in this trial and, if so,
16 what type of limiting instruction would be required. Motion *in Limine* No. 4 raises the issue of
17 bifurcation and exclusion of net worth evidence concerning Areas unless and until Mission obtains the
18 required jury finding of oppression, fraud or malice (by clear and convincing evidence) to make punitive
19 damages/net worth information relevant. References to “MIL No. __” refer to these Motions *in Limine*
20 and the legal reasoning stated therein.

21 **BACKGROUND FACTS**

22 Before providing specific objections, Areas pauses up front to provide background information
23 relevant to the specific objections stated below. Mission’s trial exhibit list identifies 4 categories of
24 documents:

- 25 1. Documents from The Legends Group
- 26 2. Documents from Fentress Architects
- 27 3. Documents from Mission
- 28 4. Documents from Areas

(See Dkt. No. 136, Ex. 6.) Background facts concerning the first three categories of documents are set forth below.

A. Documents from The Legends Group

Many of the Legends Group documents on Mission's trial exhibit were only made available to Areas on the afternoon of December 10 (yesterday). The remainder were produced only on the eve of pretrial filings. Specifically, Exhibits 286 through 318, bearing the Bates prefix "LG" were not produced to Areas until yesterday afternoon — despite apparently being documents from The Legends Group, which Areas has subpoenaed no less than 3 times. In fact, Areas sent timely document subpoenas to the very same two witnesses who Mission lists as sponsors of the undisclosed documents. And, to the extent that these proposed exhibits are relevant, they also should have been produced long ago, in response to Areas' broad document requests to Mission. But, until yesterday, Mission had never produced Exhibits 286 through 318 to Areas. At this juncture, the exhibits simply should be excluded sight unseen under Rule 37; regardless, Areas preserves any and all objections to those exhibits, which Areas obviously has not yet had an opportunity to carefully review.

So that the Court has a full appreciation of the games being played by Mission and Legends here, we pause to provide factual background and context. In meeting and conferring over their proposed motions *in limine*, Areas' counsel indicated that Areas intended to bring motions *in limine* based on, among other things: (i) Mission's and Legends' failure to produce build-out documents called for in discovery whose existence had been established by Areas; and (ii) Mission's failure to provide documents substantiating its supposed damages. On December 3, 2012, Mission produced both Mission documents and Legends documents that previously had been withheld, largely to try to address Areas' proposed motion *in limine* for exclusionary relief based on Mission's failures to comply with its disclosure obligations concerning damages. (Insofar as Legends is concerned, those exhibits now appear as Trial Exhibits 250-258; the belated production changes nothing, for reasons explained in MIL No. 1.)

On build-out issues, Legends and Mission continue to withhold. The chronology is damning. During the parties' pretrial meet and confer on November 30, counsel for Mission indicated that he

1 would have more Legends documents to produce in the very near future. The following Tuesday,
 2 December 4, the day the parties' pretrial filings were due, Mission's counsel e-mailed Areas' counsel
 3 and indicated that Areas would be receiving an unknown volume of additional Legends documents that
 4 day (including drawings that Areas had requested in its February 21, 2012, RFPs to Mission and in its
 5 timely document subpoenas to Legends as an entity and to two Legends employees Dan Ludwig and
 6 Stanley Jackson). (Mayo Decl., Ex. 1.)² At the same time, Mission's counsel stated his "assumption"
 7 that Areas would pay Legends for retrieving these documents. (*Id.*) Areas' counsel quickly replied that
 8 Areas would not be giving Legends a blank check, but would reconsider the issue of reimbursement
 9 after Areas received both the documents and proof of the retrieval cost. (*Id.*) In response, Mission's
 10 counsel (incorrectly referring to this untimely and mandatory production as "voluntary") suggested that
 11 if Areas wasn't willing to agree in advance to paying an unknown sum for Legends' belated production,
 12 Areas' counsel would need to fly to North Carolina in order to view the documents. (*Id.*)

13 Later that day, after the parties' December 4 hearing with the Court, Mission's counsel sent a
 14 letter, via e-mail, to Areas' counsel, confirming that Mission would be filing motions *in limine*
 15 "notwithstanding the **substantial** production of Legends documents that we have **offered** to produce to
 16 you." (Ex. 2) (emphasis added). By way of explanation for Mission's withholding of documents,
 17 Mission's counsel wrote "(Denise [Mayo] (Areas' counsel) refused to agree to reimburse Legends for its
 18 reasonable costs incurred in this additional, voluntary search.³ Legends will therefore hold the
 19 documents and will make them available to you for your inspection at your convenience)." To be clear,
 20 requiring Areas' counsel to fly from Los Angeles to North Carolina in the weeks before trial is not at
 21 our convenience.

22 Later that night, Mission filed its trial exhibit list, which included a substantial number of
 23 documents, never before seen, with the prefix "LG." Naturally, Areas wondered whether (i) these were

25 ² Cites to "Ex. __" herein refer to the accompanying Declaration of Denise M. Mayo, filed concurrently
 26 with these objections.

27 ³ This, of course, is an inaccurate characterization of Ms. Mayo's statement, which merely was that
 28 Areas would not be giving Legends carte blanche without first seeing evidence of the actual search and
 retrieval costs. (Ex. 1.)

1 the same Legends documents that Legends is withholding from Areas because they were too costly to
 2 retrieve, and (ii) if so, how Mission was able to obtain copies so easily. So, Areas' counsel promptly
 3 followed up. (Ex. 3 ["Your letter indicates that Legends / Mission will withhold the documents until
 4 Areas pays Legends some amount of money. Is this your final position on the matter?"].)

5 In response, counsel for Mission (i) claimed to not be withholding documents, (ii) again insisted
 6 that Areas' counsel travel to North Carolina to view the documents,⁴ and (iii) asserted that Legends was
 7 "under no legal obligation to provide any additional documents." (Ex. 3.) The latter point, of course, is
 8 false, as any documents in the possession of Mission's contractor on this space (Legends) are, by
 9 definition, within the custody or control of Mission. And, Areas has timely served countless requests
 10 for productions on Mission calling for any such relevant documents; so, there absolutely is and was a
 11 legal obligation for Mission to produce them. In any case, Mission's counsel (perhaps realizing
 12 Mission's trial exhibits were at risk of being excluded if Mission continued to refuse to disclose them)
 13 offered that *some* of Legends' documents had been retrieved without out-of-pocket costs, and that those
 14 documents would be produced to Areas on December 6, "free of charge." (Ex. 3.)

15 Around 8:30 p.m. on December 6, still having received none of the promised documents, Areas'
 16 counsel e-mailed Mission's counsel asking about the status of the Legends production. (Ex. 4.)
 17 Mission's counsel wrote back and explained that he had changed his mind and would no longer be
 18 producing any additional responsive Legends documents — *even the ones on Mission's trial exhibit list*
 19 *that Areas had never seen*⁵ — unless Areas agreed to withdraw its MIL No. 1. (*Id.*) Needless to say,
 20 Areas does not accede to extortion. On December 10, 2012, Mission having failed at extortion, finally
 21 provided copies of Exhibits 286-318.

22 With that background, Areas objects to Exhibits 286 through 318, on the grounds that Mission
 23 has refused to timely disclose these documents to Areas. Areas further preserves all rights to object to

24 ⁴ Mission's counsel stated that this position was "based on [Areas'] refusal to agree to reimburse
 25 Legends for actual out-of-pocket retrieval costs." (Ex. 3.) Of course, as the Court may read for itself,
 26 Areas made no such refusal. Rather, Areas' counsel merely suggested that it would first need to see the
 27 documents and proof of actual retrieval costs before agreeing to give Legends a blank check. (*See* Ex.
 28 1.)

⁵ And, even the "free" documents.

the authenticity and admissibility of those documents, which Areas will not have time to review and provide more focused objections to in advance of this filing.

B. Documents from Fentress Architects

During discovery, Areas served a document subpoena on Fentress Architects, who complied by producing 172 pages of documents, which Areas marked FA000001-FA000172 and promptly produced to Mission. For reasons that remain a mystery, Mission as listed the first 139 pages of the Fentress production (a solid 80% of the documents), without interruption, leaving one to wonder if someone simply was given the task of listing them all and ran out of time. Indeed, one does not have to wonder: Upon closer inspection, these 25 exhibits are repetitive iterations of a handful of e-mail chains; with care and thought, Mission could have pared these 25 exhibits down to no more than 5 (i.e., the ones with the most complete e-mail chains).

For what it is worth, Areas stipulated to the authenticity of these documents. (*See* Dkt. No. 136 at 4-5.) But, Mission has not properly identified a sponsoring witness for Exhibits 261 through 285. Specifically, although Mission purports to be introducing these exhibits through Fentress's custodian, Mission has failed to designate the custodian as a trial witness, and hence, cannot hope to establish the evidentiary foundation necessary to admit any of these documents for any purpose. (*See* Dkt. No. 136, Ex. 4 [Mission's list of trial witnesses].) They simply should be excluded now. In the event the Court wishes to inquire further, Areas' specific objections are listed below.

C. Documents from Mission

Mission has designated as Exhibits 259 and 260 a small set of documents it produced to Areas on the afternoon of December 3, and which Areas addressed in its Motion *in Limine* No. 1 to Exclude Evidence Not Disclosed or Timely Produced. Specifically, these two exhibits are draft (not final) compiled financial statements compiled by an entity called Abacus Accounting Center, who expressly discloses: "*We are not independent with respect to Mission San Jose Airport, LLC.*" Areas hereby incorporates by reference its arguments for exclusion of this evidence as set forth in the specific discussion of these documents in Areas' MIL No. 1, and objects to Exhibits 259 and 260 accordingly. (Dkt. No. 145 at 6-9.) These exhibits should be excluded for the reasons noted therein.

1 **D. Exhibits Mission Has Not Yet Identified Or Disclosed**

2 As the Court was informed through the parties' joint stipulation filed yesterday, Mission's
3 exhibit list did not identify any of the exhibits previously marked in depositions as trial exhibits it may
4 use, and the parties have submitted a stipulation for the Court's approval to give Mission leave to
5 augment its exhibit list and Areas time to object. (Dkt. No. 152.) Because Mission, in discussions
6 preceding the submission of this stipulation, has attempted to blame Areas for its own omissions — and
7 doubtless will try to do so again — we set forth the actual facts below.

8 Areas had compiled a descriptive list of all deposition exhibits marked by either side to date, and
9 formatted the list with columns to be filled in with the information required by this Court's Standing
10 Order if a party wished to use one of those exhibits at trial. As a professional courtesy, Areas' counsel
11 e-mailed that document in word form to Mission's counsel, to use as counsel saw fit, as a starting point
12 for crafting Mission's trial exhibit list. In other words, Areas set things up so that Mission's counsel
13 simply would have to: (i) choose those deposition exhibits Mission wished to use and provide the rest
14 of the information required by the Standing Order; (ii) delete those deposition exhibits Mission did not
15 wish to use; and (iii) add those exhibits not previously marked as deposition exhibits, and provide the
16 additional information required by the Standing Order. (See Ex. 5 [Areas' counsel's e-mail to Mission's
17 counsel and attached exhibit chart draft to be used "as a starting point" for each party drafting their
18 respective exhibit lists].) Mission chose to file a trial exhibit list disclosing only new exhibits,
19 numbered 250 through 346. (Dkt. No. 136, Ex. 6.)

20 Two days after the pretrial filings had been made, Mission's counsel wrote to accuse Areas of
21 misleading him into thinking that Mission need only designate new exhibits, and that Areas would
22 designate everything else. (Ex. 4.) Of course, the conclusion was completely irrational, as Areas
23 actually had met and conferred over motions *in limine* directed towards many of those very exhibits. On
24 Saturday morning (December 8), Mission e-mailed Areas a new exhibit list containing 39 additional
25 exhibits, numbered Exhibits 347 through 385, that Mission offered were documents already bearing
26 deposition exhibit numbers (precisely which, Mission did not say); by Mission's own admission, the list
27
28

1 still did not contain all the information required by this Court's Standing Order. (Ex. 7 [Mission's e-
2 mail and attached new exhibit list].)

3 Areas responded that Mission had no right to violate the Court's Standing Order, and the proper
4 procedure was to obtain leave of Court to augment its exhibit list; Areas even offered to agree to a
5 stipulation granting Mission relief, so long as (i) Areas got more time to object to Mission's untimely
6 submission, and (ii) Mission did not draft a stipulation that repeated its prior attempts to blame Areas for
7 Mission's failures. (Ex. 8 [Areas' e-mail to Mission offering to join in on a stipulation and requesting
8 that Mission not draft it unfairly].) Mission responded with a stipulation that mischaracterized the entire
9 sequence of events and tried to blame Areas. (Ex. 9 [Mission's draft joint stipulation, attempting to
10 blame Areas for Mission's mistake].) Ultimately, Areas' counsel had to rewrite much of the stipulation
11 to remove the unwarranted accusations, and at last the joint stipulation was filed yesterday.

12 What all of this means for the Court and the parties now is that there will be a very truncated
13 opportunity for Areas to review whatever new exhibits Mission adds to its trial exhibit list, and even less
14 time for the Court to consider Areas' objections. Areas assures the Court it will work diligently to
15 analyze Mission's late-designated trial exhibits as quickly as possible, and will file its objections as soon
16 as it can (i.e., if possible, before the deadline in the stipulation and proposed order). And, Areas hereby
17 preserves any and all objections to Mission's late-designated exhibits, numbered 347 and above (or
18 earlier exhibit numbers if Mission, with the benefit of time, does it right) until Areas has had an
19 opportunity to review Mission's supplementation.

20 **SPECIFIC OBJECTIONS**

21 Areas does not object to the admission of the last page of Exhibits 262, and Exhibits 319, 321,
22 323, 324, 326, 327, 328, 329, 330 (only if Areas' witnesses are examined about the documents on the
23 stand), 331 (only if Pham is examined about the document on the stand), 333, 334, 335 (depending upon
24 ruling on MIL No. 3 and, again, only if Pham is examined about the document on the stand), 336, 337,
25 338, 339, 340, 341 (only as to first page) and 343. As a result of the meet and confer process, Mission
26 withdrew the following trial exhibits: 264, 265, 266, 269, 270, 273, 275, 276, 277, 278, 279, 280, 281,
27 282, 283, and 285. Thus, Areas' objections to those exhibits are not stated below.

In addition to the General Objections stated above, Areas' specific objections to the remaining exhibits are set forth below, with references to Motions *in Limine*, where appropriate.

Exhibit No.	Areas' Objections/Position
250	These documents were not timely produced, despite being called for by Rule 26, as well as formal discovery to Legends and Mission. As a consequence of this untimely production, Areas has been deprived of an opportunity to depose appropriate witnesses, and it now is too late to do so. In any event, these belated documents do not cure the problems raised by Areas' motion <i>in limine</i> . See MIL No. 1. Hearsay. FRE 401, 403 for reasons noted in MIL No. 3.
251	These documents were not timely produced, despite being called for by Rule 26, as well as formal discovery to Legends and Mission. As a consequence of this untimely production, Areas has been deprived of an opportunity to depose appropriate witnesses, and it now is too late to do so. In any event, these belated documents do not cure the problems raised by Areas' motion <i>in limine</i> . See MIL No. 1. Hearsay. FRE 401, 403 for reasons noted in MIL No. 3.
252	These documents were not timely produced, despite being called for by Rule 26, as well as formal discovery to Legends and Mission. As a consequence of this untimely production, Areas has been deprived of an opportunity to depose appropriate witnesses, and it now is too late to do so. In any event, these belated documents do not cure the problems raised by Areas' motion <i>in limine</i> . See MIL No. 1. Hearsay. FRE 401, 403 for reasons noted in MIL No. 3.
253	These documents were not timely produced, despite being called for by Rule 26, as well as formal discovery to Legends and Mission. As a consequence of this untimely production, Areas has been deprived of an opportunity to depose appropriate witnesses, and it now is too late to do so. In any event, these belated documents do not cure the problems raised by Areas' motion <i>in limine</i> . See MIL No. 1. Hearsay. FRE 401, 403 for reasons noted in

1		MIL No. 3.
2	254	These documents were not timely produced, despite being called for by Rule 26, as well as
3		formal discovery to Legends and Mission. As a consequence of this untimely production,
4		Areas has been deprived of an opportunity to depose appropriate witnesses, and it now is
5		too late to do so. In any event, these belated documents do not cure the problems raised by
6		Areas' motion <i>in limine</i> . See MIL No. 1. Hearsay. FRE 401, 403 for reasons noted in
7		MIL No. 3.
8	255	These documents were not timely produced, despite being called for by Rule 26, as well as
9		formal discovery to Legends and Mission. As a consequence of this untimely production,
10		Areas has been deprived of an opportunity to depose appropriate witnesses, and it now is
11		too late to do so. In any event, these belated documents do not cure the problems raised by
12		Areas' motion <i>in limine</i> . See MIL No. 1. Hearsay. FRE 401, 403 for reasons noted in
13		MIL No. 3.
14	256	These documents were not timely produced, despite being called for by Rule 26, as well as
15		formal discovery to Legends and Mission. As a consequence of this untimely production,
16		Areas has been deprived of an opportunity to depose appropriate witnesses, and it now is
17		too late to do so. In any event, these belated documents do not cure the problems raised by
18		Areas' motion <i>in limine</i> . See MIL No. 1. Hearsay. FRE 401, 403 for reasons noted in
19		MIL No. 3.
20	257	These documents were not timely produced, despite being called for by Rule 26, as well as
21		formal discovery to Legends and Mission. As a consequence of this untimely production,
22		Areas has been deprived of an opportunity to depose appropriate witnesses, and it now is
23		too late to do so. In any event, these belated documents do not cure the problems raised by
24		Areas' motion <i>in limine</i> . See MIL No. 1.
25	258	These documents were not timely produced, despite being called for by Rule 26, as well as
26		formal discovery to Legends and Mission. As a consequence of this untimely production,
27		Areas has been deprived of an opportunity to depose appropriate witnesses, and it now is

1		too late to do so. In any event, these belated documents do not cure the problems raised by
2		Areas' motion <i>in limine</i> . See MIL No. 1.
3	259	These draft financials are inadmissible for a host of reasons noted in Areas' MIL No. 1, at
4		6-8. Not only are they drafts compiled by an unknown accountant who is not on Mission's
5		witness list (and not disclosed in discovery), but given the nature of compilations, such
6		financial statements, even if final, could not be relied upon, as they merely publish hearsay
7		of Mission management. Further, the source documents necessary to test the accuracy of
8		these financial statements have not been produced, as would be required by the Rules of
9		Evidence. Further, because the documents were not produced until long after the
10		discovery cutoff, Areas has been denied the opportunity to depose their preparer(s) or, for
11		that matter, Mission management concerning their content. See MIL No. 1.
12	260	These draft financials are inadmissible for a host of reasons noted in Areas' MIL No. 1, at
13		6-8. Not only are they drafts compiled by an unknown accountant who is not on Mission's
14		witness list (and not disclosed in discovery), but given the nature of compilations, such
15		financial statements, even if final, could not be relied upon, as they merely publish hearsay
16		of Mission management. Further, the source documents necessary to test the accuracy of
17		these financial statements have not been produced, as would be required by the Rules of
18		Evidence. Further, because the documents were not produced until long after the
19		discovery cutoff, Areas has been denied the opportunity to depose their preparer(s) or, for
20		that matter, Mission management concerning their content. See MIL No. 1.
21	261	Hearsay. Mission offers this hearsay document for "materiality," which is Mission-speak
22		for "truth of the matter asserted." The document is hearsay as to the purpose offered.
23		Although Mission also claims the document is offered for "damages," there is nothing in
24		the document to support any category of damages Mission has claimed. Foundation as to
25		statements made by witnesses Mission is not calling.
26	262	Cumulative. Hearsay. Mission offers this hearsay document for "materiality," which is
27		Mission-speak for "truth of the matter asserted." The document is hearsay as to the

1		purpose offered. Although Mission also claims the document is offered for “damages,”
2		there is nothing in the document to support any category of damages Mission has claimed.
3		Foundation as to statements made by witnesses Mission is not calling. Areas does not
4		object to admission of the last page of this exhibit -- a schematic drawing.
5	263	Cumulative. Hearsay. Mission offers this hearsay document for “materiality,” which is
6		Mission-speak for “truth of the matter asserted.” The document is hearsay as to the
7		purpose offered. Although Mission also claims the document is offered for “damages,”
8		there is nothing in the document to support any category of damages Mission has claimed.
9		Foundation as to statements made by witnesses Mission is not calling
10	267	Hearsay. Mission offers this hearsay document for “materiality,” which is Mission-speak
11		for “truth of the matter asserted.” The document is hearsay as to the purpose offered.
12		Although Mission also claims the document is offered for “damages,” there is nothing in
13		the document to support any category of damages Mission has claimed. Foundation as to
14		statements made by witnesses Mission is not calling.
15	268	Hearsay. Mission offers this hearsay document for “materiality,” which is Mission-speak
16		for “truth of the matter asserted.” The document is hearsay as to the purpose offered.
17		Although Mission also claims the document is offered for “damages,” there is nothing in
18		the document to support any category of damages Mission has claimed. Foundation as to
19		statements made by witnesses Mission is not calling.
20	271	Cumulative. Hearsay. Mission offers this hearsay document for “materiality,” which is
21		Mission-speak for “truth of the matter asserted.” The document is hearsay as to the
22		purpose offered. Although Mission also claims the document is offered for “damages,”
23		there is nothing in the document to support any category of damages Mission has claimed.
24		Foundation as to statements made by witnesses Mission is not calling.
25	272	Cumulative. Hearsay. Mission offers this hearsay document for “materiality,” which is
26		Mission-speak for “truth of the matter asserted.” The document is hearsay as to the
27		purpose offered. Although Mission also claims the document is offered for “damages,”

1		there is nothing in the document to support any category of damages Mission has claimed.
2		Foundation as to statements made by witnesses Mission is not calling.
3	274	Cumulative. Hearsay. Mission offers this hearsay document for “materiality,” which is
4		Mission-speak for “truth of the matter asserted.” The document is hearsay as to the
5		purpose offered. Although Mission also claims the document is offered for “damages,”
6		there is nothing in the document to support any category of damages Mission has claimed.
7		Foundation as to statements made by witnesses Mission is not calling.
8	284	Cumulative. Hearsay. Mission offers this hearsay document for “materiality,” which is
9		Mission-speak for “truth of the matter asserted.” The document is hearsay as to the
10		purpose offered. Although Mission also claims the document is offered for “damages,”
11		there is nothing in the document to support any category of damages Mission has claimed.
12		Foundation as to statements made by witnesses Mission is not calling.
13	286-318	Mission held these documents hostage under threat that Areas will either have to drop MIL
14		No. 1 or fly to North Carolina if it wishes to see the documents. Amazingly, it has just
15		produced them on December 10, claiming that the production is “voluntary.” See Section
16		A above. These documents were not timely produced, despite being called for by Rule 26,
17		as well as formal discovery to Legends and Mission. As a consequence of this untimely
18		production, Areas has been deprived of an opportunity to depose appropriate witnesses,
19		and it now is too late to do so. In any event, these belated documents do not cure the
20		problems raised by Areas’ motion <i>in limine</i> . See MIL No. 1.
21	320	Hearsay. Mission claims to offer this for “notice/intent” but the way in which this would
22		support notice and intent escape Areas (given that the document is authored by an Airport
23		official) and was sent on August 27, 2012. Foundation. Mission has not listed the author
24		as a witness, and he has not been deposed. Without the author to explain his words, this
25		exhibit could not properly be admitted for any purpose.
26	322	Hearsay. Mission claims to offer this for “notice/intent,” but there is no notice, and the
27		only “intent” it shows is an “intent” not to build out the pre-swap TA-21 space (for reasons

1		having nothing to do with issues over CTX machines, of which Areas was not even aware
2		at this time). For these reasons, the exhibit also is objectionable under FRE 401, 403.
3	325	Hearsay. Mission claims to offer this for “notice/intent,” but there is no notice, and the
4		only “intent” it shows is an “intent” not to build out the pre-swap TA-21 space (for reasons
5		having nothing to do with issues over CTX machines, of which Areas was not even aware
6		at this time). For these reasons, the exhibit also is objectionable under FRE 401, 403.
7	331	See MIL No. 3. FRE 401, 403.
8	332	Hearsay. Although offered for “notice/intent,” this purpose plainly does not apply to this
9		document. Indeed, it is a Legends document with a construction schedule.
10	335	MIL No. 3.
11	341	First page is fine, but rest of e-mail does not deal with this space. Hearsay. FRE 401,
12		403.
13	342	Hearsay. FRE 401, 403.
14	344	See MIL No. 4. Also, FRE 401, 403.
15	345	See MIL No. 4. Also, FRE 401, 403.
16	346	See MIL No. 4. Also, FRE 401, 403.

CERTIFICATION

I hereby certify that I met and conferred with counsel before filing these Objections, in accordance with the Court’s Standing Order Re: Pretrial Preparation. As noted above, as a result of the meet and confer process, Mission withdrew the following trial exhibits: 264, 265, 266, 269, 270, 273, 275, 276, 277, 278, 279, 280, 281, 282, 283, and 285.

Dated: December 11, 2012

GREENBERG TRAURIG, LLP

By: /s/ Scott D. Bertzyk
 Scott D. Bertzyk
 Attorneys for Plaintiff,
 AREAS USA SJC, LLC

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is **1840 Century Park East, Suite 1900, Los Angeles CA 90067.**

On December 11, 2012, I served **PLAINTIFF AREAS USA SJC, LLC'S OBJECTIONS TO DEFENDANTS MISSION SAN JOSE AIRPORT AND MISSION YOGURT, INC.'S TRIAL EXHIBIT LIST** on the interested parties in this action by placing the true copy thereof, enclosed in a sealed envelope, postage prepaid, addressed as follows:

Daniel Rockey
Meryl Macklin
BRYAN CAVE LLP
560 Mission Street, 25th Floor
San Francisco, CA 94105

Attorney for Defendant

Tel: (415) 286-1986
Fax: (415) 268-1999

☐ **(BY FEDERAL EXPRESS)**

I am readily familiar with the business practice of my place of employment in respect to the collection and processing of correspondence, pleadings and notices for delivery by Federal Express. Under the practice it would be deposited with Federal Express on that same day with postage thereon fully prepared at Santa Monica, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if delivery by Federal Express is more than one day after date of deposit with Federal Express.

☐ **(BY U.S. MAIL)**

I served the above-mentioned document by enclosing it in an envelope and placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing.


☒ **(BY CM/ECF)**

Pursuant to CM/ECF System, registration as a CM/ECF user constitutes service through the Court's transmission facilities. The Court's CM/ECF system sends an e-mail notification of the filing to the parties and counsel of record listed above who are registered with the Court's EC/CMF system.

☒ **(FEDERAL)**

I declare under penalty of perjury that the foregoing is true and correct, and that I am Employed at the office of a member of the bar of this Court at whose direction the service was made.

Executed on December 11, 2012 at Los Angeles, California.



Harpo Sidhu